



Boxee New York (HQ)
122 W 26th St. 8th Floor
New York, NY 10001
+1 (212) 675 7400

Boxee Tel Aviv (R&D)
P.O. Box 20517
Haarbaa 16, 3rd Floor
Tel Aviv, Israel
+972 (3) 624 5678

E info@boxee.tv
W www.boxee.tv

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Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Basic Service Tier Encryption; Compatibility Between Cable
Systems and Consumer Electronics Equipment,*
MB Dkt. No. 11-169, PP Dkt. No. 00-67

Dear Ms. Dortch:

Boxee, Inc. ("Boxee") writes in response to a letter filed by RCN in this docket on February 13, 2012.¹ Contrary to the RCN Letter, Boxee Live TV does not benefit from or contribute to basic tier cable "theft," and such assertions do not provide legitimate grounds for proceeding with a basic tier encryption final rulemaking, without addressing the harms to consumers and competition previously noted by Boxee and others in the above-referenced rulemaking.

RCN bases its argument on the logical leap that because Boxee is able to connect to the internet as well as Clear QAM, it encourages users to illicitly access the basic tier by splitting coaxial cable before the modem.² But as noted by RCN, Boxee has never suggested that its users connect Boxee Live TV in this manner; rather, Boxee's blog, support website and installation guide expressly advise users to purchase a basic tier subscription from their provider.³ RCN's concerns arise not

¹ See Letter from John Nakahata, Counsel for RCN Telecom Services, LLC, to Marlene H. Dortch, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67 (Feb. 13, 2012) (the "RCN Letter").

² See RCN Letter at 2-3.

³ See Avner Ronen, "Boxee Live TV is coming. Time to cut the cord." *Available at* <http://blog.boxee.tv/2011/11/16/boxee-live-tv-is-coming-time-to-cut-the-cord/#.Tz1ETJises-> ("If you don't have reception in your area you may not be ready to cut the cord, but you may be able to give it a serious shave. Call your cable company and ask for Basic Cable. That would be a service level that includes the local ABC, CBS, Fox, NBC stations (and some others) and should cost you between \$10-\$20 depending on who is your cable provider."); Boxee Live TV, *available at* www.boxee.tv/live ("Boxee Live TV works with signals from HDTV antennas (using ATSC) or an unencrypted cable connection (using ClearQAM). The package includes a portable ATSC digital terrestrial antenna, which can be used within 10 miles of an ATSC transmitter. For users without a strong over the air signal we recommend a roof-top antenna or a basic cable package."); Live TV FAQ, *available at* <http://support.boxee.tv/entries/20688733-live-tv-faq> ("If you don't have reception in your area you may not be ready to cut the cord, but you may be able to give it a serious shave. Call your cable company and ask for basic cable."). The forums cited in the RCN Letter are, as noted by RCN, moderated by Boxee users, not Boxee

from Boxee's connectivity options,⁴ but from RCN's choice not to block its broadband-only customers from accessing Clear QAM. As has been highlighted previously, this problem can be addressed using cable traps, which can be installed outside a customer's house to block the Clear QAM signal.⁵ This alternative solution would achieve the same desired effects, preventing access to Clear QAM without a basic tier subscription and eliminating long customer waits for technician visits, that encrypting Clear QAM would, without inflicting the harms of the current proposal.

The economic logic in the RCN Letter is as tenuous as the purported cause and effect relationship described above. The RCN Letter states: "Boxee would have the Commission believe that its potential customers would pay for the basic tier—which for RCN, for example, is \$18.50 per month in New York and \$22.50 in Chicago—but that if those customers were required to pay \$7.50 per month for a basic set-top converter (\$4.95 in Chicago), they would refuse to buy Boxee's product."⁶ Beyond the astonishing suggestion that a 40% increase in the cost of their basic tier service won't negatively affect consumers or competing device manufacturers, RCN's argument is fallacious. Boxee has consistently advertised its support of Clear QAM as an alternative for users who have poor OTA reception and merely want to shave the cord.⁷ Cord shavers are subscribers who choose to move to basic cable from higher tiers as a means of saving money (adding Boxee to a basic tier subscription is not "shaving" anything, merely adding more functionality). With RCN's Digital cable costing \$60 a month currently,⁸ users can drop their service to \$18.50 for basic cable and connect a Boxee Box to Clear QAM, saving a customer \$41.50 every month. Perhaps RCN believes that its customers would not be interested in saving more than \$270 in the first year (taking into account the purchase of a Boxee Box with Live TV), and \$500 each year after that, on what Boxee believes to be a superior experience to traditional cable. In any case, it's clear that RCN does not want to give that option to customers, and would prefer to force subscribers to rent an additional set-top box for every TV in their house, as they will need to do if Clear QAM is encrypted.

Boxee's position with respect to Clear QAM is no more "of its own making"⁹

employees. That users have discovered and shared with each other the fact that, like RCN, some cable operators do not block Clear QAM from their broadband customers, is not something Boxee can control.

⁴ This feature is not unique to the Boxee Box. Smart TVs necessarily include Clear QAM tuners and also connect to the internet, and some DVRs do as well.

⁵ See, e.g., Letter from Ken Plotkin, CEO, Hauppauge Computer Works, Inc., to Marlene H. Dortch, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67, at 3 (Feb. 14, 2012).

⁶ RCN Letter at 3.

⁷ See *supra* note 3.

⁸ See RCN, "Digital Cable TV in D.C. Metro Plans & Pricing," available at <http://www.rcn.com/dc-metro/digital-cable-tv/services-and-pricing>.

⁹ RCN Letter at 3.

than is RCN's exposure to basic tier "theft" from opting not to use traps. Boxee developed Boxee Live TV to existing standards and regulations in the pursuit of addressing a problem specifically highlighted in the National Broadband Plan.¹⁰ The development process began approximately a year ago, and was nearly complete when the current NPRM was published in October. Boxee was unable to predict that Clear QAM may be eliminated in such short order and created a product that offers a superior consumer experience based on circumstances currently in existence. Today consumers can purchase a TV or an alternative to a cable provider's box, take it home, and connect it to Clear QAM. They do not need to go to a cable company's office. They do not require a truck roll. They do not require any communication with their cable company other than perhaps a phone call to purchase a basic tier subscription. Encrypting Clear QAM will make this impossible. Instead, a customer will have no choice but to either rent a cable box from a provider, or purchase a significantly more expensive CableCARD device,¹¹ call a provider for a CableCARD, pay an installation charge, pay an additional monthly fee, and go through a difficult setup¹² that, as NCTA has pointed out, often results in one or more truck rolls, despite the availability of self-install options.¹³

Boxee understands that like itself, RCN must operate its business under certain technical, regulatory and expense constraints. But consumers and innovative market entrants should not shoulder the costs of incumbents' preferred approach to dealing with such constraints. All of RCN's stated concerns would be addressed if the Commission required cable operators desiring to encrypt Clear QAM to instead make available a standard encrypted IP feed of broadcast channels in a way that does not require additional hardware, rental fees or cable operator consent. This solution would foster innovation and mitigate the myriad of negative consequences that encrypting Clear QAM will have on consumers. The Commission should not issue a final rulemaking permitting the encryption of basic tier cable in the absence of such an alternative.

¹⁰ See Connecting America: The National Broadband Plan (Mar. 16, 2010) Ch. 4, at 51 "[S]everal innovators are attempting to bring Internet video to the TV. Their devices often cannot access traditional TV content that consumers value—content that is not available or difficult to access online. Without the ability to seamlessly integrate Internet video with traditional TV viewing, Internet video devices like Apple TV and Roku have struggled to gain a foothold in U.S. homes."

¹¹ See, e.g., Reply Comments of Hauppauge Computer Works, Inc., MB Dkt. No. 11-169, PP Dkt. No. 00-67, at 2 (Dec. 22, 2011) ("But at a price of \$149.-, our digital CableCARD product is more expensive than any of our USB TV tuners.").

¹² See Gabe Gagliano, "CableCARD Trials and Tribulations," available at <http://www.techofthehub.com/2012/02/cablecard-trials-and-tribulations.html>.

¹³ See Letter from Neal M. Goldberg, Vice President and General Counsel, NCTA, to Marlene H. Dortch, FCC, CS Dkt. No. 97-80 (Jan. 30, 2012) (attaching cable operator reports showing the following average number of truck rolls to install a CableCARD: Cablevision Systems: 1.0; Charter Communications: 1.5; Comcast: 1.04; Cox Communications: 1.1; Time Warner Cable: 1.04).

Pursuant to the Commission's rules, this notice is being filed in the above-referenced dockets for inclusion in the public record.

Respectfully Submitted,

/s/ Melissa Marks

Melissa Marks
General Counsel

cc: Sherrese Smith
William Lake
Jessica Almond
Alison Neplokh
Michelle Carey
Mary Beth Murphy
Steve Broeckaert
Brendan Murphy